IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

Crl.MC.No. 295 of 2007()

C.C.NO.333 OF 03 OF THE JFCM, NORTH PARAVOOR.
CRIME NO.131 OF 01 OF VARAPUZHA POLICE STATION.

PETITIONER: ACCUSED 5

VARGHESE, AGED 67 YEARS,
S/O.THOMMAN, VEVUKATTIL HOUSE,
PUTHENPALLIKARA, VARAPUZHA VILLAGE,
PARAVOOR TALUK.

BY ADV. SRI.P.M.ZIRAJ

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM REP. BY SUB INSPECTOR OF POLICE,
VARAPUZHA POLICE STATION.

BY P.P. SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 295 OF 2007

Dated this the 7th day of February, 2007

ORDER

The petitioner is the 5th accused and faces indictment in a prosecution , inter alia, under Sec.379 of the IPC. The crux of the allegations against him is that he along with the co-accused had with dishonest intention removed sand belonging to the Panchayat. Crime was registered. Investigation was conducted by the police. Final report was filed and cognizance has been taken. The petitioner has already appeared before the learned Magistrate and is enlarged on bail.

2. The petitioner has come to this Court with a prayer that proceedings against him may be quashed. According to the petitioner, there is no worthwhile allegation that he had removed the sand belonging to the Panchayat. No such complaint has been filed by the Panchayat. In these circumstances, it is prayed that powers under Sec.482 of the Cr.P.C. may be invoked to prematurely terminate the

proceedings against the petitioner.

3. It has often been repeated that the mere fact that the accused person is entitled for acquittal or discharge is not a reason for this Court to invoke its extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C. to prematurely terminate the proceedings against the indcitee. The procedure to be followed by the learned Magistrate is the one under Chapter-XIX-A of the Cr.P.C. The petitioner can appear before the learned Magistrate and raise the contention that the allegations against him are baseless and he is entitled to be discharged. Such claim for discharge must be considered by the learned Magistrate at the stage of Sec.239/240 of the Cr.P.C. I find no reason to invoke the powers under Sec.482 of the Cr.P.C. The learned counsel for the petitioner submits that if unnecessary insistence were made on the personal appearance of the petitioner, it would work out great prejudice and hardship to the petitioner. I find no reason to insist that the petitioner must be personally present on all dates of posting. The petitioner can apply and I find no reason why the learned Magistrate should not allow such request and permit the petitioner to be represented by counsel till a decision is taken

that the charges are liable to be framed against the petitioner. If no charges are liable to be framed, his personal appearance need not be insisted by the learned Magistrate.

4. With the above observations, this Crl.M.C. is dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge